73-281 FILE COPY

Supreme Court, U. S.
FILED
AUG 10 1973
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

73-281

ANTHONY BARON,
Petitioner,

vs.

[redacted],
Respondent,

CLARE BARON,
Real Party in Interest.

PETITION FOR
WRIT OF CERTIORARI

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ANTHONY BARON

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY BARON,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

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Attorneys for Petitioner,
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IN THE

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PETITION FOR
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TO THE HONORABLE CHIEF JUSTICE AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Petitioner, ANTHONY BARON, requests that this Court issue a Writ of Certiorari to review the opinion of the Court of Appeal of the State of California, Second

Appellate District, Division Two, filed March 15, 1973, Petition for Rehearing denied April 2, 1973; Petition for Hearing in the Supreme Court of the State of California denied May 9, 1973.

Petitioner requests review under Title 28, Section 1257, subsection 3 of the United States Codes, "Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:

> "(3) By Writ of Certiorari where the validity of a treaty or statute is drawn in question, or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under the United States."

The questions presented to this Court are:

(1) In an action for Dissolution of Marriage, where the rights and interests in title to certain articles of personal property are in issue, does the Trial Court violate Section 1 of the Fourteenth Amendment of the Federal Constitution where the court denies one of the litigants the opportunity to present his case by reason of the Trial Court's undue restriction on the right of cross-examination thereby denying the litigant the opportunity to present his case and defenses constituting a denial of due process of law; and

(2) Where the court is required under state law to make an equal division of the community property of the parties, does the court violate Section 1 of the Fourteenth Amendment of the Federal Constitution and deny the litigant due process of law by adjudicating the rights and interests in the property based upon insufficient evidence to support the findings thereby depriving the litigant of property without due process of law.

Section 1 of the Fourteenth Amendment of the Federal Constitution reads as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S.C.A. Constitution, Amendment 14, Section 1, page 168.

STATEMENT OF THE CASE

Petitioner, ANTHONY ELI BARON and CLARE AVNET were married on December 30, 1967, and separated on March 15, 1970. During the time of the marriage, and prior

separation, the parties resided at 400
ury Lane, Beverly Hills, California.
ring the course of their marriage, Mr.
RON opened an income-generating stock
count with Dean Witter and Company. Mr.
RON's signature was the only one author-
ed on the account. Prior to and during
e course of the marriage, Mrs. AVNET
de gifts to the Petitioner of large sums
money, expensive automobiles and several
eces of art work.

During the course of the marriage, Mrs.
NET also advanced to Mr. BARON either as
loan or in trust, sums of money with
ich Mr. BARON attempted to establish a
oduction company and later an automobile
ency.

At the time of the dissolution of the
rriage, the central issue was the rights
d interests of the parties to property
en held in the name of Petitioner,
THONY BARON.

Mrs. AVNET's position with regard to
ose properties was that they had all been
ans to the Petitioner and that the court
ould declare the property as her separate.

Subsequent to her testimony on direct examination by her counsel, counsel for the Petitioner attempted to cross-examine Mrs. AVNET to show the nature of the transactions in order to establish a uniform series of gifts and in fact to establish that the articles in question were also gifts and that the property should be declared that of the Petitioner herein. The court denied Petitioner's counsel the right to further cross-examine the witness and in the Interlocutory Judgment of Dissolution of Marriage ordered the property be the sole and separate property of Mrs. AVNET.

Petitioner, through his counsel of record, objected to the limitation of the cross-examination and made an offer of proof which was denied by the court. The text of the objections and offer of proof are attached hereto as Appendix "B" and incorporated herein as though set forth in full.

PETITIONER'S ARGUMENT

THE TRIAL COURT IMPROPERLY RESTRICTED CROSS-EXAMINATION OF PETITIONER ON A MATERIAL ISSUE OF THE CASE AND THEREBY DENIED RESPONDENT THE RIGHT TO PRESENT EVIDENCE

On direct examination of Mrs. AVNET, she testified concerning several items which she claimed was given as gifts and several items which she claimed had been given as loans. On cross-examination, counsel for Mr. BARON attempted to prove that in fact the several loans claimed by Mrs. AVNET were actually gifts. That at the time given there was no mention of any obligation on the part of Mr. BARON to repay these gifts and that in fact Mrs. AVNET had voluntarily bestowed these gifts upon Mr. BARON. The Trial Court improperly denied Mr. BARON the opportunity to cross-examine Mrs. AVNET regarding these items. An offer of proof was made with the intent of showing a common scheme and uniform series of gifts by Mrs. AVNET to the Petitioner and the Petitioner's case was predicated upon the fact that all things given to him by Mrs. AVNET were gifts and not loans.

The record clearly shows the attempt by Petitioner to cross-examine Mrs. AVNET regarding material issues of the case (See Appendix "B" attached hereto and incorporated herein as though set forth in full).

By the court's statement in rejecting the offer of proof by Petitioner's counsel, it limited and unduly restricted the cross-examination. These restrictions on cross-examination of Mrs. AVNET denied Petitioner the right to bring out the matters and in effect denied him the opportunity to present his case.

It has been stated that due process is a matter of fundamental fairness and that the test as to whether a party has been afforded due process of law is one of fundamental fairness in the light of the total circumstances. Sigma Chi Fraternity v. Regents of the University of Colorado (1966) 258 F. Supp. 515, Watson v. Patterson (1966) 358 F.2d 297.

In the situation presented, the denial of the right to cross-examine the opposing party on the issue of ownership of properties subject to the disposition of the court is obnoxious to the ideal of fairness

ich is part and parcel of the due pro-
ss clause of the Fourteenth Amendment.
e process of law as discussed in United
ates ex rel. Montgomery v. Ragen (1949)
F. Supp. 382, means fair play and is
at process of impartial law which is
nding because it is right.

In the instant situation, the deprivation of the right to cross-examine the witness and thereby produce evidence material to the proper disposition of the case, is sufficiently shocking to our universal sense of justice and fundamental fairness as to be considered a denial of due process.

It is generally recognized that due process of law deals essentially with the denial of fundamental fairness by reason of the restriction on Petitioner's cross-examination, Mr. BARON was denied the right to present evidence on his behalf and the said denial was so fundamentally unfair as to be a deprivation of due process of law.

THE DECISION OF THE TRIAL COURT REGARDING THE OWNERSHIP OR CERTAIN ARTICLES OF PERSONAL PROPERTY WAS BASED UPON INSUFFICIENT EVIDENCE TO SUPPORT THE FINDINGS AND BY REASON OF SUCH INSUFFICIENT EVIDENCE THE TRIAL COURT DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS OF LAW

The finding of the Trial Court that the ownership of certain personal property then in the name of ANTHONY BARON was actually the property of Mrs. AVNET is unsupported by sufficient evidence brought out at the trial. The evidence received by the court was uncontradicted that stock accounts with Dean Witter and Company were in the name of ANTHONY BARON. It was also uncontradicted that Mr. BARON was the only party entitled to sign on the account and further even Mr. SAFFRO, witness for Mrs. AVNET stated that there was no reason preventing Mr. BARON from withdrawing or closing the entire account at any time. All of the evidence received at the Trial Court indicated that dominion and control over the two accounts were under Mr. BARON's name and were exercised solely by Mr. BARON. The only evidence submitted with regard to

ownership of the accounts was that the
nds used to open the accounts were loans
om Mrs. AVNET to the Petitioner. Assum-
g without conceding that in fact the
ney with which the accounts were opened
s traced to a loan, the tracing of the
an in and of itself is not sufficient to
tablish ownership of the accounts in Mrs.
NET. The tracing of the loan is merely
fficient to establish a cause of action
r the amount of the loan against Mr.
RON and the determination by the Court
at the accounts themselves were in fact
ned by Mrs. AVNET constitutes a denial of
operty without due process of law in
olation of Section 1 of the Fourteenth
endment of the Federal Constitution, in
at no evidence having been admitted with
spect to any ownership interest in the
count, Petitioner was deprived of prop-
ty without due process of law.

It is generally recognized that the due
ocess clause of the Fourteenth Amendment
the Federal Constitution is intended to
otect the individual from arbitrary acts
Government as was stated in Patton v.
ate of North Carolina (1966), 256 F. Supp.

225, aff'd. 88 S. Ct. 818, 390 U.S. 905, that:

> "Protection of the individual from arbitrary action is the very essence of due process of law."

Petitioner contends that the act of the Court in distributing the property where there was insufficient evidence upon which to make that distribution was an arbitrary and capricious act which in fact deprived the Petitioner of vested rights in personal property in deprivation of his Constitution rights under the Fourteenth Amendment.

Again, as stated in United States v. Yount (1920) 267 Fed. 861, the due process of law by which Congress is limited in Amendment Five and the states by this Amendment, is equivalent to the law of the land and is intended to protect the citizen against arbitrary action and to secure to all persons equal and impartial justice under the law.

CONCLUSION

Under the circumstances of the case, he Trial Court's denial of Petitioner's ight to present evidence by unduly limiting his cross-examination and by the capicious and arbitrary order depriving the etitioner of property in which he had a ested interest, constitutes a violation of the fundamental fairness demanded by Section 1 of the Fourteenth Amendment of the Federal Constitution, and Petitioner prays that this Court issue a Writ of Certiorari to review the proceedings.

Respectfully submitted,

LAW OFFICES OF
MARVIN M. MITCHELSON

By Marvin M. Mitchelson
Marvin M. Mitchelson

Attorneys for Petitioner,
ANTHONY BARON



NOT FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CLARE BARON, Petitioner and Respondent, vs. ANTHONY BARON, Appellant.	Civil No. 39980 S.Ct. No. WED 16399 Court of Appeal-Second Dist. FILED Mar 15 1973 Clay Robbins, Jr., Clerk

---

Appeal from judgment of the Superior Court of Los Angeles County. Goscoe O. Farley, Judge. Affirmed.

For Appellant: Marvin M. Mitchelson

For Respondent: Edward M. Raskin; Gerald E. Lichtig; John A. Ellis.

Appeal from interlocutory judgment of dissolution of marriage.

Appellant, Anthony Baron (Husband) and respondent, Clare Baron (Wife), were married on December 30, 1967. On August 22, 1967, prior to the marriage, Wife transmitted a check for $25,000 to Husband for the purpose of opening a stock account in his name with Wife's stockbroker, Mr. John Saffro of Dean Witter & Co. The parties agreed and Wife instructed her stockbroker that the $25,000 principal was to remain hers and the profits and dividends, if any, were to be sent to Husband. After the marriage took place, Wife on August 27, 1968, transmitted to Husband a check for $23,244.50, which he deposited in his bank account. On January 28, 1969, Wife placed in Husband's control a check for $50,990.55, of which he used $17,000 to open a second stock trading account in his name with Mr. Saffro and $28,000 to purchase three automobiles which were registered in his name.

The parties separated on March 30, 1970, and on May 12, 1970, Wife filed a Petition for Dissolution of Marriage pursuant to Civil Code, section 4506(1), in which she alleged that all of the assets in possession of appellant originated from

her separate property. Appellant alleged an interest in certain real property and "various other stocks, bonds and other assets".

In this appeal from the interlocutory judgment of dissolution appellant contends: (1) the trial court improperly restricted his right of cross-examination; (2) the evidence was insufficient to support the finding that respondent owned the stock accounts; and (3) the loss of the court reporter's notes covering the proceedings of one day of the trial resulted in prejudice to appellant. We find these arguments to be without merit.

The court, in relevant part, made the following findings of fact:

"B. The Court finds that Petitioner placed in the possession and control of Respondent certain moneys, including but not limited to, the following:

"Check dated August 22, 1967 in
"the sum of $25,000.00;
"Check dated August 27, 1968 in
"the sum of $23,244.50;

"Check dated January 28, 1969 in
"the sum of $50,990.55,

and the Court finds that said payments were loans by Petitioner to Respondent and were not gifts. Said funds were delivered to Respondent by Petitioner in trust for her use and benefit and said property and the proceeds thereof and the properties acquired therewith at all times thereafter continued to be the separate property of Petitioner and Respondent held same in trust for Petitioner, who was the sole beneficial owner thereof and entitled to have the same conveyed to her.

"1. The foregoing funds were satisfactorily traced by Petitioner and Petitioner established that the moneys and stocks existing in the margin and cash accounts at DEAN WITTER & CO., and standing in the name of Respondent and bearing account number 40-19427, including but not limited to the following:

"(a) 2300 shares General Exploration;

"(b) 400 shares American Export Industries;

"(c) 300 shares AMPCO Pittsburg Corporation;

"(d) 1000 Ling Tempco Vought Warrants, were derived from said funds, and said stocks and moneys existing in said margin and cash accounts are the sole and separate property of Petitioner.

"2. The foregoing funds were satisfactorily traced by Petitioner and Petitioner established that the purchase of that certain 1961 Rolls Royce Silver Cloud automobile, bearing California license number 505 APB, presently in the possession of Husband and in his name as legal owner, and that certain 1967 Mercedes Benz automobile, bearing California license number 535 ZWG, presently in the possession of Husband, in the Wife's name as registered owner and in Husband's name as legal owner, were derived from said funds and said automobile are the sole and separate property of Petitioner."

The testimony of respondent and checks Wife transferred to Husband provided substantial evidence to support the finding of the trial court that Wife owned the stock accounts which were opened in the name of appellant. (See Barnes v. McKendry, 260 Cal.App.2d 671.) It is well established that, "When a finding of fact is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination of whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding. (citation)." (Lipka v. Lipka, 60 Cal.2d 472, 475. (Italics the court's). (See also Adoption of R.R.R., 18 Cal.App.3d 973, 983.) "All conflicts must be resolved in favor of the prevailing party and the evidence viewed in the light most favorable to him." (Taormino v. Denny, 1 Cal.3d 679, 686.)

During an extensive cross-examination of respondent, covering most of the afternoon of one day of the trial and part of the morning of the next, appellant's counsel attempted to prove that several of the

items which respondent claimed to have given to appellant as loans or advances were actually gifts and, in this manner, to establish a "common scheme and uniform series of gifts" by respondent to appellant. It was developed that respondent gave appellant the following as gifts: a $2,000 diamond ring; a $7,000 star sapphire ring, a watch, and several trips to Europe. Respondent also testified, however, that she gave appellant the following as loans or advances to be repaid at such time as he was financially able to do so: $3,000 to obtain a divorce from his wife so he would be free to marry respondent; a $10,000 Maserati Mistral automobile; $5,000 worth of Israel bonds, and various sums of money for appellant's family in Israel. The court curtailed this cross-examination after it became repetitive.

In addition, when respondent stipulated that she was making no claim to any of these sums, further questioning on the matter became irrelevant, since the issue of whether or not these sums were loans or gifts had no bearing on the nature of the sums given by respondent to appellant to

open stock accounts. (People v. Blackwell, 257 Cal.App.2d 251, 255-56; People Ex Rel. Dept.Pub.Wks. v. Miller, 231 Cal.App.2d 130, 134-135.)

It is settled that "A trial court has a clear duty to supervise the conduct of the trial to the end that it may not be unduly protracted and that other litigants too may have their day in court. In carrying out this duty the court may confine cross-examination within reasonable limits and may curtail cross-examination which relates to matters already covered, or which are irrelevant. These are matters clearly within the court's discretion and only a manifest abuse thereof will require a reversal (citation". (Sullivan v. Dunnigan 171 Cal.App.2d 662, 670.) (See also Marshall v. Marshall, 232 Cal.App.2d 232, 254-55; and Garcia v. Hoffman, 212 Cal. App.2d 530, 537.) There was no abuse of discretion - manifest or otherwise.

Appellant's contention in respect of the loss of reporter's notes is without merit. The record indicates that most of the trial proceedings of May 12, 1971, were not transcribed "due to the fact that the

reporter's notes for this day have mysteriously disappeared; * * *." Based on this fact, appellant, after judgment, moved for a new trial pursuant to section 914, Code of Civil Procedure. (See California Rules of Court, Rule 4(e), Draftsman's note (e); and Fickett v. Rauch, 31 Cal.2d 110.)

The order denying the motion for a new trial was not error. The settled statement discloses that the omitted testimony raised no substantial controversial issues concerning which a judgment on the merits would depend. (See Fickett v. Rauch, 31 Cal.2d, supra.) The statement merely shows respondent Wife testified she gave appellant a check for $23,244.50 dated August 27, 1968, for the purpose of loaning appellant money to give to his family. Respondent was not cross-examined regarding this testimony.

The judgment is affirmed.

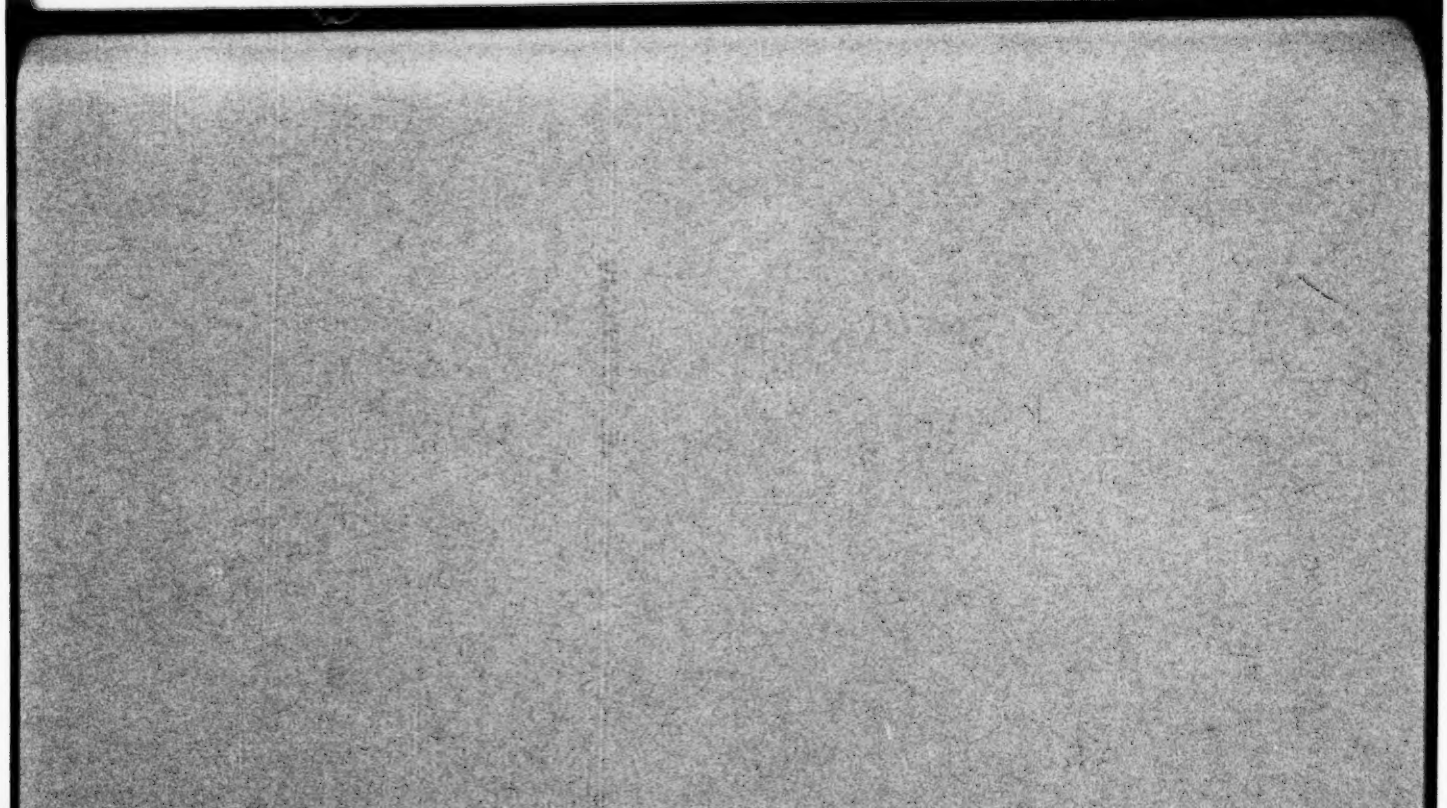
NOT FOR PUBLICATION.

ROTH, P.J.

We concur:

HERNDON, J.

COMPTON, J.



A No, sir.

Q Was that a gift?

A Obviously.

Q And while he was here, did Roberto Baron ask you for a loan?

A He spoke about it, yes.

Q Did he ask you for a loan?

MR. RASKIN: If the Court please, I don't see the relevance. Roberto is not a party to this action. We are not suing for the return of any funds from Roberto, and I don't see what the relevance is.

THE COURT: What is the purpose, Mr. Miller?

MR. MILLER: Your Honor, I want to show that all funds turned over to Mr. Baron's family were gifts from this woman to his family.

THE COURT: Are you making any claim for any of these moneys?

MR. RASKIN: No, sir.

MR. MILLER: As I understood it, your Honor, she claimed that she advanced certain moneys, and this line of questioning

started when I was asking her about the moneys she claimed she advanced that she intended to have repaid. I think the record is clear on that.

THE COURT: She may have intended to have it repaid, but the question is, is she claiming in this proceeding here?

MR. RASKIN: May I shorten the proceeding considerably here, your Honor, because we may go into this thing for days without any result of any kind that's of any importance. What we are claiming presently are the automobiles that he has registered in his name. We are claiming the two stock accounts. One is the margin account that was opened up in his name with the original $25,000. We are claiming the second stock account wherein he used part of the $51,000 to open up a cash account. They are both with Dean Witter and Company. And both in the name of Mr. Anthony Baron. There may be some money in a bank account in Mr. Baron's name. We are claiming that. So far as the moneys are concerned, we don't think that a judgment against him for what is in excess of that would be worth anything. So we are not going to press any.

THE COURT: Anyway, you are not claiming it.

MR. RASKIN: We are not going to press any claims beyond what he has in his possession or under his control. And if the Court please, if we pressed the claim for all the moneys that she says she loaned him, it would be far in excess of these assets, and we are not interested in it.

MR. MILLER: Your Honor--

THE COURT: Wait a minute. To be specific, you are not making any claim for moneys handed over to her husband that in turn was handed over to his relatives in Israel or anywhere else.

MR. RASKIN: Only because he doesn't have assets to cover them, and we will waive the claim as to any excess.

THE COURT: Regardless of the reason, you are not making a claim.

MR. RASKIN: Yes, sir.

THE COURT: Okay.

MR. MILLER: Your Honor, what they are claiming is everything Mr. Baron had, that's for the record. Number two, I feel that I

am being denied my opportunity of cross examination by these constant speeches by counsel about his contentions.

Number one, we are claiming that this woman gave everything to Mr. Baron as a gift, and that what she's telling us now about loans are falsehoods. And I want to go into collateral matters to prove these falsehoods, and how patently--

THE COURT: I have allowed you a lot of discretion in that. But we can't just keep going into it and going into it when it's really not relative.

MR. RASKIN: So I will then make objection as to any further examination along this line of questioning that counsel has been pursuing, upon the ground that it is no longer relevant or material.

MR. MILLER: Your Honor, I am merely trying--

THE COURT: I have ruled on it. Objections are sustained.

MR. MILLER: For the record, may I make an offer of proof, then?

THE COURT: Okay. Make it short.

MR. MILLER: I am not trying to do anything but make an offer here, your Honor. We want to make an offer of proof, and I would try to bring this out by cross examination if I were permitted, your Honor: that the petitioner advanced and gave to the respondent not only all of the items that she testified to after marriage and before marriage thus far, as gifts, but that she had gvien many more items and many other sums of cash to respondent as gifts; and my object in cross-examining the petitioner as to her statements that some of these items, even amounts she doesn't recall at this time, were to be repaid, I intend to go in to show by my cross examination that there was never any agreement to repay any of these sums of money, that there were never even discussions about it, that she doesn't even know any terms of any purported loan or loan agreement for repayment, and to show by my cross examination that her statements couldn't possibly be true.

Now, if I am restricted in just accepting her statements in her answers, that what she gave, the sapphire was a gift and

these other things were loans, and I am not permitted to cross-examine her to get to the truth of the matter, I feel that the Court isn't getting the benefit of the truth in this matter, or an opportunity of hearing our side of the situation. Because I intend to show on our case that all of these matters in fact were gifts, and there was never even one word about repayment, that these are complete fabrications, that were formed in the mind of the petitioner, and related to the respondent as of the time they separated, and that this whole action is not over these sums of money--she couldn't care less about them--but is a means, a vindictive way of carrying out her threats to exhaust all of the respondent's assets. And that was the reason that I wanted to be able to conduct cross examination.

However, if the Court feels that I'd be taking up too much time or it would be irrelevant, then, you know, I don't know what to do about it.

THE COURT: All right. You have been conducting a cross examination along these lines for some time without gaining any advantage whatsoever that I could see. I think it is immaterial and irrelevant, and the offer will be rejected.

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Order Date
May 14, 1973

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, Civil No. 39980

THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

Roth, P.J.
McC

BAROK

v.

BAROK

Appellant's petition

ring DENIED.

FILED

MAY 9 1973

G. E. BISHEL, Clerk

S. F. Deputy

WRIGHT

Chief Justice

I, BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this

MAY 9 1973 day of A.D. 19

Clerk

By Deputy Clerk

POST CARD

SIX CENT STAMP HERE

CLERK'S OFFICE
Court of Appeal
SECOND DISTRICT

CALIFORNIA STATE BUILDING, ROOM 1201
CIVIC CENTER
LOS ANGELES, CALIF. 90012

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Suite 825 Gateway East Bldg.

Century City, 90067, Calif

Los Angeles, Cal. APR 2 1973, 19

TITLE { BARON vs. BARON } No. 39980

THE COURT:

PETITION FOR REHEARING DENIED.

CLAY ROBBINS, *Clerk*

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REPLY TO PETITION FOR WRIT OF CERTIORARI

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Real Party in Interest.

REPLY TO PETITION FOR WRIT OF CERTIORARI

THE THE HONORABLE CHIEF JUSTICE AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

We respectfully submit that a review of the Petition and of the record in this case reveals no constitutional question of

sufficient substance for review by this Honorable Court.

Respectfully submitted,

EDWARD M. RASKIN
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JOHN A. ELLIS

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